IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

WEDNESDAY, THE 11TH JULY 2007 / 20TH ASHADHA 1929

MACA.No. 184 of 2003()

OPMV.2741/1993 of MOTOR ACCIDENT CLAIMS TRIBUNAL, KOTTAYAM
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APPELLANT/2ND RESPONDENT:

THE ORIENTAL INSURANCE CO.LTD.,
KOTTAYAM, REPRESENTED BY ITS ASST. MANAGER,
REGIONAL OFFICE, ERNAKULAM NORTH,
KOCHI -- 18.

BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)

RESPONDENTS: CLAIMANT:
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1. P.T. SOMAN, S/O. THANKAPPAN P.K.,
PATHINONNIL PUTHENPURA, KOLIROOR P.O.,
KOTTAYAM.

2. P.K. SHAJIMON, S/O. KOCHUKOCHU,
PUTHENVEEDU HOUSE, KUMARAKOM P.O.

BY ADV. SRI.P.SANTHOSH KUMAR (TR)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 11/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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M.A.C.A. NO. 184 OF 2003

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Dated this the 11th day of July, 2007

J U D G M E N T

Second respondent Insurer in O.P(MV) No.2741 of 1993 on the file of the Motor Accidents Claims Tribunal is the appellant. Appeal is filed challenging the award passed by the Tribunal by which Insurer was directed to pay the compensation awarded.

2. Short facts necessary for the disposal of the appeal are as follows: On 3.6.1993, the first respondent, petitioner in the O.P., was travelling in a goods Autorikshaw bearing Reg. No.KL-5/658 driven by the second respondent. It reached near to Karithas at about 2.30 a.m. It capsized and first respondent sustained injuries. He filed a petition claiming compensation impleading the owner-cum-driver of the Autorikshaw as well as the Insurer. Owner did not appear and contest the case. Insurer alone contested the case. It was contended that the policy issued to the vehicle in question was only an act only police which will not cover passenger risk and the Insurer was not liable to indemnify the insured.

3. Tribunal found that the the accident occurred due to the negligence of the owner-cum-driver of the vehicle. Tribunal also found that the first respondent was entitled to get a compensation of Rs.35,000/- with interest at the rate of 9%. Tribunal overruled the contentions raised by the Insurer relying on the decision reported in National Insurance Co. Ltd. v. Abdu (2001 KLJ 719) and held that the Insurer was liable even in the case a passenger in a goods vehicle. Challenging the award passed by the Tribunal, this appeal is filed by the Insurer.

4. The only point arising for consideration in this appeal is regarding the liability of the Insurer. I have carefully gone through the evidence on record. I do not find any reason to interfere with the finding of the Tribunal that the accident occurred due to the negligence of the owner-cum-driver of the vehicle and the first respondent was entitled to get a compensation of Rs.35,000/-. But regarding the liability of the Insurer, the issue is no more res integra in view of the decision reported in New India Assurance Co. Ltd. v. Asha Rani (2003 (2) SCC 233). It is to be noted that the accident occurred on 3.6.1993, prior to the amendment of the Motor

Vehicles Act, 1994. Policy will not cover the owner or his agent of a goods carried in a goods vehicle. So the finding of the Tribunal that the Insurer is liable to indemnify the insured is not correct. But considering the fact that the accident occurred in the year 1993, I am of the view that it is only just and proper that the appellant is directed to pay the money and then recover the same from the owner-second respondent by executing this award itself.

In the result, the appeal is allowed in part. The findings of the Tribunal that the accident occurred due to the negligence of the owner-cum-driver of the vehicle and first respondent is entitled to get Rs.35,000/- as compensation are confirmed. But the finding of the Tribunal regarding the liability of the Insurer to indemnify the insured is modified. It is ordered that the appellant shall deposit the compensation awarded by the Tribunal to the first respondent and then recover the same from the second respondent-owner-cum-driver of the vehicle in execution of this award itself.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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M.A.C.A. NO. 184 OF 2003

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J U D G M E N T

11TH JULY, 2007